

# State of Nevada Silver State Health Insurance Exchange Web-Based Broker Study

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## OVERVIEW OF WEB-BASED BROKERS

This study on Web-based brokers provides a summary of existing laws and guidance related to Web-based brokers, an overview and analysis of a sample of the Web-based broker market in Nevada, and an analysis of the potential risks, costs, and benefits of using Web-based brokers in the Silver State Health Insurance Exchange (SSHIX). Finally, the report concludes with recommendations that the SSHIX should consider if it decides to pursue working with Web-based brokers in the Exchange.

Health insurance agents and brokers, collectively called “producers” by insurance companies, assist consumers and small employers in choosing and enrolling in health insurance products. Producers are licensed and regulated by the states. For purposes of this analysis, Web-based brokers are defined as producers that offer health insurance options primarily through a Web portal. While the level of services vary, typically, the consumer is responsible for inputting information onto the Website to obtain insurance quotes and to select among various insurance options. Conversely, traditional health insurance brokers typically gather needed information from consumers, complete necessary forms, and present the insurance options to the consumer.

### Background

The Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010, together referred to as the Affordable Care Act (ACA) were signed by President Obama in March 2010. The ACA law mandates the creation of Health Benefit Exchanges that allow consumers to access and evaluate plans from commercial insurers and to apply for health subsidy programs (e.g., Medicaid, the Children’s Health Insurance Program (CHIP), and subsidized commercial health insurance) that best meet their needs through an online marketplace. The Exchanges are organized marketplaces to help consumers and small businesses buy health insurance in a way that permits easy comparison of available plan options based on price, benefits, and quality. By pooling people together, reducing transaction costs, and increasing price and quality transparency, Health Benefit Exchanges are designed to create efficient and competitive health insurance markets to facilitate the offer of “qualified health plans” (QHPs) for individuals and small employers.

### Agents and Brokers (Producers)

The role of producers within Exchanges has been a topic of much discussion. Under the ACA final rule, Exchanges are required to work with Navigators to educate and inform health insurance consumers and assist them in navigating the Exchanges. Although producers can be Navigators, the rule prohibits states from requiring Navigators to be licensed producers or to carry errors and omissions insurance, which is

typically carried by producers. The final rule explicitly recognizes that producers, including Web-based brokers (sometimes called private exchanges), can play an active role in marketing Exchange products. Experience from the Massachusetts Connector has shown that support from producers is vital to the success of the Exchange.

One concern raised in the feedback to the proposed rule is that producers in the Exchanges might steer consumers towards plans that are most profitable for the producer, and not the best placement for the consumer. There are also concerns about whether the producers can adequately ensure the privacy of sensitive information that consumers will make available to the Exchanges for insurance assistance program eligibility determinations. A concern specific to Web-based private exchanges is that they might undermine and reduce participation in the public Exchange. As a result, although the final rule allows producers, including Web-based entities, to market Exchange products, it requires the Exchange itself to determine eligibility for public insurance affordability programs and to ultimately enroll the consumer in a QHP. Web-based brokers must allow consumers to view all QHPs offered through the Exchange, display all QHP data and information provided through the Exchange, and not steer consumers to particular plans through incentives such as rebates or giveaways. The private exchanges must also allow consumers to withdraw from the Web-based broker process at any time and to use the Exchange Website instead. Producers will also have to register with the Exchange and comply with its requirements. The finer details still need to be worked out, but the final rule has paved the way for producers to hopefully support and participate in the Exchange while offering some protection to consumers who use their services. The next section of this report provides a more detailed analysis of the relevant laws, rules, and guidance for Web-based brokers to participate in an Exchange.

## EXISTING LAWS AND GUIDANCE

This section inventories and summarizes the existing laws, guidance and questions related to the use of Web-based brokers in an Exchange.

### Federal Laws and Regulations

As mentioned above, the ACA legislation was signed by the President in March 2010. In response to the ACA and to ensure as little federal intervention as possible, the State of Nevada enacted Senate Bill 440 in June 2011 (later codified as NRS Chapter 695I) to establish the SSHIX. The following sections highlight the applicable federal laws, rules and guidance applicable to producers and specifically Web-based brokers. Research did not uncover any significant litigation or Nevada specific statutes or rules related Web-based brokers.

Section 1312(e) of the ACA gives states the option to permit agents or brokers to enroll individuals and employers in QHPs. Section 1312(e) of the ACA is silent on Web-based brokers *per se*, but the Centers for Medicare and Medicaid Services (CMS) has acknowledged in its rule-making process for Exchanges that Exchanges may wish to work with Web-based agents and brokers with experience in health plan enrollment. Thus, CMS rules at 45 CFR 155.220 give states the option to permit Web-based brokers to participate in an Exchange if the Web-based brokers meet all requirements that apply to agents or brokers enrolling individuals and employers in QHPs.

The CMS rules at 45 CFR 155.220 were published in the Federal Register as final rules on March 27, 2012, effective May 29, 2012. That Federal Register incorporated and updated prior, sub-regulatory CMS guidance and revised proposed rules that CMS promulgated on July 15, 2011 and August 17, 2011. CMS reiterated on March 27, 2012 statements in the preamble to the proposed rules in 2011 that Exchanges are “accountable for the actions of Web-based entities” interacting with Exchanges. 45 CFR 155.220(a)(3), unlike other provisions of the “final” 155.220, is an “interim final” rule upon which CMS has requested additional comments by May 11, 2012 via the Federal Register. “Interim final” rules may be subject to further revision following CMS analysis of additional comments.

45 CFR 155.220(a) (1) provides that a state may permit agents and brokers to enroll individuals, employers, or employees in any QHP in the individual or small group market as soon as the QHP is offered through an Exchange in the State. Subparagraph 155.220(a)(2) provides that such enrollment may be viewed as enrollment “through the Exchange” only if requirements in subparagraph (c), (d), and (e), as described below, are met (that stipulation is critical because premium tax credits and cost-sharing reductions under the ACA are limited to enrollments “through the Exchange”). Subparagraph



155.220(a)(3) provides that agents and brokers may “assist individuals in applying” for advance payment of premium tax credits and cost-sharing reductions if requirements in subparagraphs (d) and (e) are met.

45 CFR 155.220(b) provides that the Exchange may elect to provide information regarding licensed agents and brokers on the Exchange’s Website for the convenience of consumers seeking health insurance through the Exchange. The proposed rule had said that the Exchange could provide that information on its Website or in other publicly available materials.

45 CFR 155.220(c)(1) states that any agent or broker must ensure the applicant’s completion of an eligibility verification and enrollment application “through” the Exchange’s Website. 45 CFR 155.220(c)(2) states that the Exchange (not the broker) must transmit enrollment information to the QHP issuer, as provided under 155.400(a), so that the QHP issuer may effectuate the applicant’s enrollment in the QHP. An individual cannot enroll or be enrolled in a QHP “through the Exchange” unless the individual completes the single streamlined application as described in 45 CFR 155.405 and is determined eligible through the Exchange.

Within the context of 45 CFR 155.220(c), subparagraph 155.220(c)(3) indicates that the Website of an agent or broker may be used by consumers to select a QHP. If the Website of an agent or broker is used to select a QHP, the Web-based broker’s Website must meet standards for Website disclosure and display of QHP information in 45 CFR 155.205(b)(1) and (c) that apply to the Exchange Website. The Exchange standards in 45 CFR 155.205(b)(1) and (c) require Website disclosure of premium and cost-sharing information, summaries of benefits and coverage, coverage level (bronze, silver, gold, or platinum), results of enrollee satisfaction surveys, quality ratings, medical loss ratios, transparency of coverage measures, and provider directory information. That information must be provided in plain language on the Exchange Website and the Web-based broker’s Website in a manner suitable to individuals with disabilities and limited English language proficiency.

In addition, subparagraph 155.220(c)(3) requires that the Web-based broker’s Website must:

- Enable consumers to view all QHPs offered through the Exchange;
- Not offer financial incentives for enrollment such as “rebates or giveaways”;
- Display all QHP data that the Exchange provides;
- Maintain audit trails in an electronic format for at least 10 years; and
- Allow consumers to withdraw from the Web-based broker’s enrollment process at any time if the consumers decide to use the Exchange’s Website instead.



45 CFR 155.220(d) requires agents or brokers to comply with an agreement with the Exchange under which agents or brokers must:

- Register with the Exchange before assisting individuals to enroll in QHPs;
- Receive training in QHP options and insurance affordability programs; and
- Comply with all standards concerning privacy and security of personally identifiable information that apply to the Exchange and the agents or brokers under 45 CFR 155.260.

45 CFR 155.220(e) requires agents or brokers to comply with applicable state law, including state law related to confidentiality and conflicts of interest.

### **Exchange Draft Blueprint**

Following the publication of Exchange rules in the Federal Register on May 27, 2012, CMS published on May 16, 2012 a “Draft Blueprint for Approval of Affordable State-based and State Partnership Insurance Exchanges.” Item 28 of a state application in that document pertains to Web-based brokers and refers to the aforementioned 42 CFR 155.220 provisions. The elements of item 28 in the application are preceded by the term “if applicable” as 45 CFR 155.220 gives states the option to permit Web-based brokers to participate in an Exchange.

Item 28 mentions the need for:

- A clear definition of the role of Web-based brokers;
- Evidence of Web-based brokers’ compliance with 45 CFR 155.220(c), (d), and (e);
- Agreements with Web-based brokers;
- Web brokers’ registration with Exchanges;
- Training for Web-based brokers on QHP options and insurance affordability programs;
- Web brokers’ compliance with the Exchange’s privacy and security standards; and
- A process to verify that Web-based brokers comply with state law.

Item 28 specifically asks the State to describe in the application:

- How the Exchange’s Website will interface with the Web-based broker’s Website;
- The Exchange’s policy for ensuring Web-based brokers’ compliance with 45 CFR 155.220(c)(3), (d), and (e);
- How the Exchange will ensure that Web-based brokers are appropriately trained; and



- How the Exchange will ensure that Web-based brokers meet the Exchange's privacy and security standards.

## **ANALYSIS OF INFORMATION AVAILABLE FROM EXISTING WEB-BASED BROKERS SERVICING NEVADA**

This section presents a compilation of information gathered regarding the characteristics of existing Web-based brokers and the level and type of services offered. Information gathered includes, but is not limited to:

- Number of brokers and summary of plans and services offered;
- Web hits and Web use reports;
- Summary of information and level of service offered to Web users;
- Characteristics of Web users (number, age, insurance status, gender, county, city of residence, etc.) as available;
- Disposition of inquiries as available (referrals made, outcomes, as available); and
- Strengths and weaknesses of the current Web-based broker network and any unique features.

The organizations below are those PCG was able to contact and that provided information. We also gathered information as available from the Internet or other sources. This review was not intended to be a scientific study with detailed granularity, but rather a high-level survey of existing Web-based brokers serving the State of Nevada for purposes of helping to understand the current landscape of Web-based brokers including their capabilities, capacity, and populations served. Note that some providers contacted did not provide complete responses to all of our inquiries.

### **Healthinsurance.com**

#### **Summary of Services Offered**

Healthinsurance.com/Dentalinsurance.com are insurance exchanges that allow individuals, families, and employers to purchase health and dental insurance. The shopping experience allows anyone to compare and sort plans, get up-to-the-minute quotes, and purchase insurance either through a licensed agent or online. HealthInsurance.com offers a wide variety of health plans including individual and family health insurance, group health insurance, Health Maintenance Organizations, Preferred Provider Organizations, Point-of-Service Plans, Indemnity plans, short-term health insurance plans, dental health insurance, and international travel health insurance. Plans from health insurance companies such as Blue Cross and Blue Shield, Anthem, Aetna, Humana, Golden Rule Insurance Company, HealthNet, Assurant, Celtic, Unicare, Kaiser and PacifiCare Life and Health Insurance Company are available.



### Web Hits

Healthinsurance.com/Dentalinsurance.com averages about 90,000 unique visitors each month.

### Web User Characteristics

The Website's target demographics are 21 to 35 year olds and the ratio is about 55 percent female versus 45 percent male.

### Disposition of Inquiries

Healthinsurance.com averages about 1,600 applications per month through its Websites.

### Unique Features

According to Dentainsurance.com staff, the dental insurance exchange has the largest selection of dental insurance options in the country, and is the only one that allows a consumer to choose between a Dental Health Maintenance Organization, a Dental Preferred Provider Organization, Discount Plans and indemnity coverage. Healthinsurance.com has also just completed its dental insurance exchange for employers, which reportedly will be the first of its kind in the industry. It will allow a retiree/employee to choose from several stand-alone dental options, purchase a plan, and also allow for automatic subsidy reimbursement.

### Strengths/Weaknesses

Healthinsurance.com believes it has the best dental insurance shopping experience online. Its health and dental exchange can both be cobranded, and they currently work with over 500 associations through its relationship with Marsh-McLennan. The dental insurance shopping experience has a high online conversion rate (more than 70 percent of clients purchase via the Web).

### Number of Clients/Enrollees

Healthinsurance.com has enrolled more than 100,000 members through its exchange.

### Primary Web-Based Broker Competitors

eHealthinsurance.com and GetInsured.com.



## **McEville Benefits**

### **Summary of Services Offered**

McEville Benefits specializes in group and individual life and health insurance, including medical, dental, vision, disability, and supplemental coverage, as well as life insurance or an insurance annuities. McEville Benefits offers dozens of carriers and hundreds of plans. However, they specifically limit the number of carriers and plan options that a person will find, so as not to overwhelm them. Consumers can also send McEville Benefits an e-mail to request information and quotes on plans such as individual or group health, life insurance, etc.

### **Disposition of Inquiries**

In most cases, after visiting the McEville Website, consumers contact McEville staff via phone or e-mail. McEville also receives a notification e-mail when someone obtains a quote from the Website, and management automatically follows up with the consumer via e-mail or phone. Through this process, the broker can obtain more information on the consumer needs and desires (price, plan, carrier, etc.), and discuss their current health insurance situation.

### **Hits**

McEville Benefits receives two to three calls per day from a person or company that visited their Website. On a daily basis, McEville Benefits reports that it tends to be more of an insurance advisor/resource than focusing on sales.

## **BCB Insurance Brokerage**

### **Summary of Services Offered**

BCB offers insurance plans on a variety of platforms, including health, dental, vision, life, disability, auto, home, business, insured employee benefits and more.

### **Web User Characteristics**

BCB's online customers range in age from 18 to 65; however, most customers are aged of 35-65. In addition, the majority of Website visitors are female and from or near Nevada, or looking to find coverage in Nevada.

### Disposition of Inquiries

Most clients are looking for consultation on maternity coverage, and Health Insurance Portability and Accountability Act (HIPAA) plans.

### Unique Features

BCB is a local Nevada broker and reports that people often prefer to meet in person to discuss their options. As a result, BCB offers clients an in-depth and in-person consultation on their needs and questions.

### Strengths/Weaknesses

BCB cites their broker team and easy to navigate Website as their main strengths, while acknowledging that their software is a weakness that might hamper their ability to effectively compete with other online insurance brokers.

### Number of Clients/Enrollees

BCB routinely draws anywhere from 20 to 50 new clients each month.

### Primary Web-Based Broker Competitors

eHealthinsurance.com

## **eHealthInsurance.com (eHealth)**

### Summary of Services Offered

eHealth reports that it is the leading online source of health insurance for individuals, families, and small businesses with capabilities in: 1) online expertise in generating demand for its services; 2) a powerful technology platform that is deeply integrated with carriers; and 3) domain expertise with industry knowledge and relationships. eHealth currently provides a SaaS exchange platform for carriers and captive brokers for individual, family, Medicare, dental, and vision health plans. This platform is built on 14 years of experience in the consumer-driven health insurance market.

eHealth reports that it is the largest private sector Exchange for individuals, families, and small businesses:

- More than 15 million visitors and more than 40 million insurance quotes annually;
- About 35 percent of its customers were previously uninsured;

- More than 3 million clients are insured through eHealthinsurance.com;
- A focus on the consumer experience; and
- Is a technology provider to 38 health insurance carriers and government agencies for eCommerce and broker technology solutions.

### Web Hits

More than 15 million visitors and more than 40 million insurance quotes annually.

### Web Use Reports

Tracking/reporting is in place to measure customer's process through the entire funnel, from visitor to completed application. Key metrics include visitors, quotes, started and completed applications. Key metrics can be "sliced" by a variety of dimensions: geography, demographics, marketing source, time/date, and carrier to name a few. eHealth reports that it is continuously evolving its reporting/analysis capabilities, including Web analytics and site testing such as behavior on the site, response to site changes, and new features, etc.

### Web User Characteristics

According to a study of more than 300,000 eHealthInsurance policyholders as of February, 2011:

- Average age of policyholder: 37.6 years old.
- Percent of policyholders that are single: 60.7 percent.
- Percent that are Male: 53.7 percent.
- National average premium for an individual policy: \$183/month.
- National average deductible for an individual policy: \$2,935.
- National average premium for a family policy: \$414/month.
- National average deductible for a family policy: \$3,879.
- Percent holding health savings account (HAS)-eligible plans: 17.3 percent.

According to a study of consumers shopping at eHealthInsurance in 2010/2011:

- 34 percent of shoppers were previously uninsured.
- 17.6 percent of respondents indicated that they currently have health insurance through an employer.



- More than 16 percent of shoppers describe themselves as currently covered by a Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) plan.

Additional demographics:

- College educated: 67.4 percent.
- Married: 52.6 percent.
- Between the ages of 45 and 64: 56.7 percent.
- Nearly seven in ten (65.2 percent) report being employed either full or part-time.
- Nearly three in four (74.2 percent) indicate that they need health insurance coverage under a new plan to begin within 30 days.

#### Disposition of Inquiries

Generally, consumers visit eHealthInsurance.com to shop for individual, family and small business health insurance plans. Reportedly, many of the people that purchase plans from eHealth are self-employed, coming off of employer or COBRA coverage, early retirees, students or recent grads, and families in need of health insurance for themselves or their child(ren).

A 2011 study of consumers shopping at eHealthInsurance during the 2010-2011 timeframe revealed that:

- Over half of the respondents (52.1 percent) indicated that rate increases or the need for more affordable coverage spurred them to shop for a new plan.
- More than two in ten 2010-2011 respondents (22.3 percent) cited the impending loss of their current coverage as a reason to shop.
- 15.8 percent were shopping because they were looking for better benefits and 2.9 percent because of a benefit change to their current plan.
- 19.2 percent were looking on behalf of someone else (perhaps a friend or family member) who is uninsured.
- 5.5 percent were shopping because they were unhappy with their current health insurance company.

#### Unique Features

eHealth reported the following as their unique features and attributes:

- Flexibility and adaptability;
- A flexible platform that can adapt quickly to changing consumer preferences;

- The ability to communicate added value to consumers:
  - Content management expertise is critical because:
    - Something is always changing – plans, rates, applications, etc.;
    - Must be able to quickly respond to new regulations or requirements;
    - The ability to add new products or update them quickly is imperative;
- Carrier Connectivity;
- Secure electronic exchange network;
- Licensed broker in all 50 states with 180-plus carriers, 10,000-plus plans;
- Online applications and electronic signatures;
- Direct link into carrier underwriting systems;
- 750,000+ underwriting rules managed; and
- eApproval for expedited application approval.

### Strengths

eHealth reported the following as its strengths:

- A market leader in consumer-driven health plan selection (3 million consumers);
- An active network of more than 180 carriers;
- A market leader in health insurance sales technology for individual and family plans and Medicare; and
- An established exchange platform licensing business.

### Number of Clients/Enrollees

eHealth reports more than three million customers insured since the company's inception. Estimated membership (enrollees/policyholders) at June 30, 2012 totaled 876,900 members.

### Primary Web-Based Broker Competitors

None noted that offer end-to-end service of quoting, plan comparison, and online enrollment in one place, with the volume of health insurance companies and available plans that eHealth offers.

## **GetInsured.com (GetInsured)**

### **Summary of Services Offered**

GetInsured.com offers individual and family health insurance plans to those under age 65. Additionally, they offer ancillary products, such as dental, vision, accident medical, limited indemnity, life insurance, and short term medical. They also offer their technology solution and call center services to states in support of health insurance exchanges or to carriers on a private label basis.

### **Web Hits**

The GetInsured Website averages about 200,000 unique visitors per month.

### **Web User Characteristics**

GetInsured operates in 45 states and roughly 40 percent of its consumers are uninsured and about 60 percent are female.

### **Disposition of Inquiries**

All GetInsured consumers are online shoppers looking for new health insurance plans.

### **Unique Features**

GetInsured reports that it is adding capabilities to support small businesses, and that its platform has the ability to generate and route leads/consumers to a network of field brokers to service consumers face-to-face. They have unique telephonic enrollment capabilities to service rural populations as well as bilingual agents, and translation services to support wide ranges of demographics. GetInsured's call center offers inbound and outbound predictive dialing with interactive voice response and automatic call distributor capabilities to automate the service experience. Their private exchange is also the only exchange to have National Committee for Quality Assurance quality ratings displayed for users during plan selection.

### **Strengths/Weaknesses**

GetInsured's strengths lie in its ability to service a wide range of the nation's population online in self-service environment, via live chat, or over the phone. They also integrate ancillary products like dental and vision to fully service their customers. The operation is profitable and has operated at scale for seven years, providing a world-class ecommerce and consumer support experience. The one weakness today is the inability to service small groups in a defined benefits model and to service Medicare eligible populations. However, it is working on developing these capabilities.



### Number of Clients/Enrollees

GetInsured reports that it currently has about 30,000 enrollees.

### Primary Web-Based Broker Competitors

eHealthinsurance.com.

## **Summary of Results of Web-Based Broker Survey**

As shown in the following table, Web-based brokers typically offer more than just medical insurance with dental, life and vision being the primary additional services offered. The number of Web hits reported ranged from 90,000 per month to more than a million, and the number of enrollees ranged from about 30,000 to more than 3 million. However, the numbers are inclusive of many or all states, not just Nevada. The user characteristics varied, but three of the four that responded to this element reported that females made up the majority of consumers. The brokers varied in their approaches for serving consumers with some relying heavily on phone calls and some offering live online chat functions. eHealth.com was the primary competitor cited by other brokers.

The Web-based broker entity information for this report and the following table was gathered in some cases from phone interviews, data provided via e-mail, and via research on the Internet; but has not been audited or otherwise verified. Some programs contacted did not respond to our requests for information.

**Table 1: Nevada Web-based Broker Summary**

<b>Organization</b>	<b>Health insurance.com</b>	<b>McEvilly Benefits</b>	<b>BCB Insurance Brokerage</b>	<b>eHealth .com</b>	<b>GetInsured .com</b>
<b>Insurance Services</b>	Medical Dental Life	Medical Dental Vision Disability Life	Medical Dental Vision Disability Life Auto Home Business	Medical Dental Vision	Medical Dental Vision Disability Life
<b>Average Web Hits</b>	About 90,000 per month	Not available, but 2-3 calls per day from Web visitors	Not provided	About 15 million visitors and 40 million quotes annually	Roughly 200,000 per month
<b>User Characteristics</b>	Primarily 21-35 year olds and 55% female	Not provided	Primarily aged 35-65, from Nevada, and female	Average age of 38 and 34% previously uninsured. 53% are male.	Under age 65, about 40 percent uninsured, and 60% female
<b>Number of Clients/Enrollees</b>	More than 100,000	Not provided	20-50 new clients each month	More than 3 million	About 30,000 - from 45 states
<b>Disposition of Inquiries</b>	1,600 applications per month	Most result in a phone call to consumer	Many looking for maternity coverage or HIPPA plans	52% of consumers shopping due to rate increases	Consumers are looking for new insurance plans
<b>Self- Reported Unique Features</b>	Dental exchange	More of an advisor to consumer	Easy to navigate Website	Flexibility, adaptability, and carrier connectivity	Ability to support small business, extensive phone system capabilities, and live online chat
<b>Primary Competitors</b>	eHealth and GetInsured	Not provided	eHealth	None	eHealth

## POTENTIAL BENEFITS, COSTS, AND RISKS OF USING WEB-BASED BROKERS

This section will describe the risks, benefits, and potential costs of using Web-based brokers and include answering questions such as:

- What technologies/functionality will the Exchange need to involve Web-based brokers in the enrollment process? What will these technologies cost?
- Will consumers who use Web-based brokers be able to have a seamless customer experience equivalent to that of consumers who went directly to the Exchange's Website? Will it be better or worse?
- Should the Exchange display information about Web-based brokers (and other brokers and Navigators) on the Exchange's Website?
- Will the Exchange verify and track state licensure for Web-based brokers?
- What standards, training, protocols, consumer safeguards and agreements will need to be in place to prevent "steering" and improper disclosure (inadvertent or intentional) or use of consumer information by the Web-based broker? Will Web-based brokers access or retain any protected consumer information?
- What legal, financial, and compliance risks might the Exchange face for improper actions of Web-based brokers? What are the best strategies to mitigate these risks?

Should Nevada entrust agent or brokers with responsibility for enrolling individuals, employers, or employees in QHPs, in a manner that constitutes "enrollment through the Exchange," through their own (i.e. the insurers) own Websites, the decision carries very real technological and programmatic considerations. For example, one hurdle involves establishing broker access to enrollment information only, and protecting sensitive eligibility information and protected health information. In order to enroll in a health plan individuals must first be determined eligible. Brokers and agents are not authorized to conduct eligibility determinations. Another consideration is that the Exchange, not the broker, is required to transmit enrollment information to the QHPs. Finally, the broker must display all Exchange QHP data on its Website. This includes premium and cost-sharing information, summaries of benefits and coverage, coverage levels, results of enrollee satisfaction surveys, quality ratings, medical loss ratios, transparency of coverage measures, and provider directory information. The information must be in plain language, and accommodate individuals with disabilities and/or limited English language proficiency.

The activities to establish, support, maintain and monitor brokers' ability to sell QHP Exchange products bear unknown, but not insignificant costs. The costs will include tasks such as developing needed portals or interfaces for sharing and updating required information; dealing with information security and potential breaches; providing resources for broker and consumer support, complaints, and appeals;

conducting broker training and certification; registering and executing agreements with brokers; and providing ongoing monitoring of program compliance. Since the insurance plans for consumers must retain the same cost structures whether the consumer applies through the Exchange or a Web-based broker, the additional costs associated with Web-based brokers must be borne by the Exchange, participating brokers, or both. Nevertheless, the benefits to such investments may be worth the effort and enhance enrollment activities. In addition, the majority of Web-based brokers appear to offer additional insurance services and products that may be beneficial to consumers and the Exchange may benefit from the additional capacity of the brokers. Moreover, working with Web-based brokers might provide the Exchange with a mechanism to learn from their Website development and utilization expertise and development of key performance metrics.

The primary role of the broker will be to support consumers with plan selection activities. The final rule states that any agent or broker must ensure the applicant's completion of an eligibility verification and enrollment application "through" the Exchange's Website. The risk to seamless and adequate customer service is the broker's limitations in assisting with the eligibility determination processes. If a consumer requires assistance or guidance with eligibility processing, he or she is not likely to receive adequate support from a Web-based broker. However, this may be overcome if consumers independently complete eligibility activities on the Exchange Website or through the Exchange's call center and then work with the broker to choose a health plan. While separating eligibility activities from plan selection activities may appear to conflict with ACA principles regarding seamlessness, it is the consumer's right to determine the pathway to coverage that best meets his or her needs and the level of support required through each step of the process.

The Exchange Website will provide consumers with information on the channels through which they can purchase insurance, consistent with the goal of facilitating access to insurance. Should the Exchange elect to allow brokers to help consumers select an Exchange product, then it makes sense that the Exchange would provide information to consumers about Web-based broker options.

The Exchange must establish rigorous controls to prevent steering and improper disclosure of consumer information. This will be a significant challenge. Historically and currently, agents and brokers have built alliances with insurers and are paid to market plans to desirable consumers. As sellers of Exchange products, agents and brokers will need to operate agnostically – informing consumers about Exchange products and cost sharing obligations that meet their needs. This is a fundamental challenge for both the Exchange and the agent/broker community. Standards, training, protocols, safeguards, and agreements to consider developing include the following:

- The Exchange should consider taking a proactive approach to ensuring that brokers and the consumers who elect to use their services are informed of their respective obligations, risks, and consequences. Consumers and brokers need to know prohibitions on accepting or offering incentives to enroll with a particular plan, and that the Exchange will collect



and compile all information about consumers, regardless of the pathway chosen to select a health plan.

- The Exchanges could consider establishing contractual agreements with brokers and agents, legally binding them to perform plan selection assistance agnostically, and conforming to Exchange administrative requirements regarding consumer interaction and reporting.
- Agent/broker training must be mandatory and formal, documenting attendance, and successful completion of training, perhaps with a quiz or test at the end to demonstrate understanding and competence.
- Exchanges must establish consistent reporting requirements at a level of detail that provides transparency into broker activity. Reports should be specified at a level of detail and in a format that allows aggregation of data in order to analyze trends.
- Agents and brokers should not be required or permitted to hold any protected health information. Producers may have access to protected information at the consumer's discretion.

The risks of entrusting enrollment to Web-based brokers are real. For example, the Exchange may be liable for actions of Web-based brokers. At a minimum, the Exchange will be expected to accept and resolve complaints about Web-based brokers, and participate in appeals. The Exchange must consider the risk of system security breaches including mitigation procedures, potential liability, and liability insurance.

## SUMMARY AND RECOMMENDATIONS

This section will provide the SSHIX with a series of recommendations regarding how best to work with Web-based brokers. The recommendation report will include items such as:

- Opportunities to improve efficiency and productivity while working with Web-based brokers;
- High level recommendations for the design of a unified approach to working with Web-based brokers; and
- A description of capacity and functionality required for full implementation.

While there are some inherent risks in delegating enrollment activities to Web-based brokers, leveraging the power of insurance industry experts with proven skills in advising consumers about health insurance options might improve the Exchange's efficiency and productivity. Establishing broker-facilitated enrollment is likely not as complex in some regards as implementing and managing the Navigator program, but there are some parallels. Furthermore, the Exchange will need to follow many of the same protocols and practices regardless of whether the broker is Web-based or traditional. The Exchange will be obligated to ensure that all producers working with the Exchange are prepared to support consumers. Like any new state "program", it will require rules based administration and oversight.

Permitting Web-based brokers to enroll consumers will require the Exchange to develop an administrative and oversight arm of the Exchange to monitor broker performance and compliance. Capacity planning is challenging to describe. It is hard to know how many consumers will seek the assistance of Web-based brokers, but given the Web-based broker survey results presented earlier, the numbers could be significant.

If the Exchange decides to allow Web-based brokers to facilitate consumer choice, the Exchange should consider the following approaches:

1. Determine a common set of requirements/definitions to which Web-based brokers (and in some cases consumers) must adhere if they wish to participate in the Exchange.

The Exchange should first define the role of the brokers and then a framework of requirements. These requirements should be emphasized in required Web-based broker training, memorialized in required application/registration documents, and then monitored by the Exchange or its partners. These include but will not be limited to Web-based broker requirements to:

- Avoid steering consumers to plans and accepting fees from plans;
- Not provide rebates or other monetary incentives to consumers for selecting certain plans;

- Provide periodic activity reports to the Exchange;
  - Follow state and federal rules regarding access to protected information, confidentiality, security, maintaining an audit trail, and retaining information;
  - Provide for a consumer withdrawal process at any time during the enrollment process;
  - Maintain valid licensure in the State of Nevada;
  - Indemnify the SSHIX against broker negligence, violations of laws, etc.; and
  - Execute HIPAA business partner agreements.
2. Determine the processes and operations necessary to implement and monitor Web-based broker program requirements.

For example, the SSHIX or its partners will need to:

- Establish processes to identify broker-facilitated enrollments. How best to do this requires Exchange technology resources to determine how to identify broker-assisted enrollments.
- Develop a secure portal to or a data interface between the Web-based brokers and the Eligibility system, so that broker clients can determine their eligibility without having to provide protected information to the broker, unless duly authorized by the consumer.
- Develop a secure portal to or an interface between the Web-based brokers and the Enrollment system that meet standards for Website disclosure and display of QHP information that apply to the Exchange Website. For example, the interface must facilitate broker Website disclosure of premium and cost-sharing information, summaries of benefits and coverage, coverage level (bronze, silver, gold, or platinum), results of enrollee satisfaction surveys, quality ratings, medical loss ratios, transparency of coverage measures, and provider directory information—all in plain language and in a manner suitable to individuals with disabilities and limited English language proficiency. The interface must provide for real-time or timely sharing of information such that the broker site information matches the required information from the Exchange Website. The interface must also relay consumer information from the broker Website to the Exchange so that the Exchange can provide the information to the QHPs.
- Develop and maintain a broker registration and certification application and tracking system or processes that tracks approved brokers both at an organizational level and at an individual level. This function should include verifying and monitoring that all participating brokers hold valid licenses from the state of Nevada. In addition, the SSHIX should work with its counsel to include additional provisions such as:
  - The broker will be duly licensed under all NV laws and regulations throughout the period in which the broker's agreement with the Exchange will be in effect;
  - The broker will maintain errors and omissions insurance;

- The broker is not an agent of the Exchange but rather an independent contractor who will be responsible for all taxes and other liabilities;
  - The broker will promptly report to the Exchange any inquiries or complaints of alleged violations of any laws or regulations;
  - The broker will promptly report to the Exchange if he is served with process relating to any litigation;
  - The broker will have no authority to bind the Exchange to any other agreement; and
  - The broker may not assign any provisions of the agreement to any other party.
- Identify required information, format, and timing of periodic activity reports to be provided by brokers.
  - Design and administer a training program to prepare brokers to facilitate and support enrollment.
  - Have the ability to support consumers with questions and complaints regarding broker services. This may include the establishment of appeal processes.
  - Develop and implement a periodic monitoring program to ensure broker compliance with all program provisions. To ensure consumers are aware of the prohibitions against broker steering and incentives, PCG suggests requiring all participating brokers to implement a Web based signature authorization for consumers. For example, each site should include an element that requires consumers to agree that they understand the laws prohibiting broker steering and incentives before they are able to proceed with enrollment. The consumer should be given a number to call if they have questions or concerns, or to report a violation.
  - Work with Web-based brokers to identify an acceptable payment or cost sharing mechanism/financial model to compensate the brokers and to cover the supplemental costs of working with Web-based brokers such as designing any portal or interfaced for the transferring and security of Web-based information.
3. Finally, the Exchange should monitor for any changes in the Exchange Blueprint and especially 45 CFR 155.220(a)(3) which is an “interim final” rule, and may be subject to further revision following CMS analysis of additional comments.

